

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2106 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JITUBHAI POPATBHAI THAKORE

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

Mr.H.L.Jani, GOVERNMENT PLEADER for Respondent

No. 1, 2, 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 10/08/98

ORAL JUDGEMENT

1. The petitioner who is the son of the detenu Smt. Lilaben Popatji Ambaji Thakore has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of the order, dated 22.1.1998 passed by the Police Commissioner,

Ahmedabad city under section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act").

2. In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on five pending trial cases under Prohibition Act and one which is at the investigation stage also under the Prohibition Act. Over and above these prohibition cases, further reliance is also placed on the statements of witnesses for the alleged incident, dated 29.12.1997 where the concerned witnesses were beaten on the ground that the detenu was not permitted to store the liquor in their house, and on another occasion when the detenu was advised not to take delivery of liquor near the school. On both the occasions that the witnesses were beaten and many people gathered. However, nobody made any attempt to save the witnesses because of fear of the detenu. Not only that the crowd started running helter-skelter when the detenu ran towards them with open knife and atmosphere of fear was created and even tempo of public life was disturbed. Considering this material the detaining authority has recorded the finding that the detenu is a bootlegger within the meaning of section 2(b) of the PASA Act and with a view to preventing her from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the detenu which has been challenged by the son of the detenu.

3. On behalf of the detenu, it was contended that even if the allegations made against the detenu are accepted as true, it is too much to brand her as a bootlegger. The Supreme Court in Piyush Kantilal Mehta vs Commissioner of Police, Ahmedabad city, AIR 1989 SC 491 on similar allegations made against the detenu in that case has held that the offences alleged against the detenu in the order of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area giving rise to the question of maintenance of public order. The order of detention could not therefore be upheld. In view of this decision, it is not possible for me to uphold the order of detention in the present case. The allegations made against the detenu by the witnesses are minor incidents of beating by the detenu and which could not be said to create feeling of insecurity among the general public. In view of this, the order of detention is vitiated.

4. In the result, this petition is allowed. The

order of detention dated 22.1.1998 is quashed and set aside. The detenue-Smt.Lilaben Popatji Ambaji Thakore is ordered to be released forthwith, if not required in connection with anyother offence. Rule is made absolute accordingly with no order as to costs.

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